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No. 08-1579

IN THE

Supreme Court of the United States

THE RECTOR, WARDENS AND VESTRYMEN OF ST. JAMES PARISH IN NEWPORT BEACH, CALIFORNIA, *ET AL.*,

Petitioners,

v.

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, *ET AL.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of California

JOINT SUPPLEMENTAL BRIEF OF PETITIONERS AND SELECT RESPONDENTS* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The Rector, Wardens and Vestrymen of St. David's Parish in North Hollywood, California, a California Nonprofit Religious Corporation; The Rev. Jose Poch; Dianne Charves; Deborah Chase; William Coburn; Primi Esparza; Laurie Leney; Wendy Leroy; Megan Mcallister; Alwayne Palmer; Janet Palmer; Benson Usiade; and Chris Woodrum [St. David's Respondents].

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TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 2

I. The Decision of the South Carolina Supreme Court Deepens the State Court Split Identified in the Petition. 2

A. The South Carolina Court held that a neutral principles of law approach is required by the First Amendment. 2

B. The South Carolina Court expressly rejected what the California Court below deemed a "strong argument" that the Episcopal Church's Dennis Canon merely restated pre-existing Church policy. 4

C. The South Carolina Court also held that the Dennis Canon itself was of no legal effect. 5

II. The South Carolina Supreme Court's Decision Is A Model Of Clarity, Applying The Neutral Principles Of Law Approach Approved By This Court In *Jones* v. *Wolf* In A Manner That Does Not Give Rise To The Constitutional Problems Generated By The Decision Of The California Supreme Court Below. 6

CONCLUSION 7

SUPPLEMENTAL APPENDIX: *All Saints Parish Waccamaw v. The Protetant Episcopal Church in the Diocese of South Carolina* 7a

TABLE OF AUTHORITIES

Cases

All Saints Parish Waccamaw, et al. v. The Protestant Episcopal Church in the Diocese of South Carolina, et al., No. 29724 (S.C., September 18, 2009) (available at http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=29724) ..... passim

Bishop & Diocese of Colo. v. *Mote*, 716 P.2d 85 (Colo. 1986) 4, 6

Church of God of Madison v. *Noel*, 318 S.E.2d 920 (W. Va. 1984) 3

Episcopal Diocese of Rochester v. *Harnish*, 899 N.E.2d 920 (N.Y. 2008) 5

Fluker Cmty. Church v. Hitchens, 419 So.2d 445 (La. 1982) 3

In re Church of St. James the Less, 888 A.2d 795 (Pa. 2005) 4, 5

Jones v. *Wolf*, 443 U.S. 595 (1979) ..... i, 6, 7

Pearson v. Church of God, 478 S.E.2d 849 (S.C. 1996) 2

Protestant Episcopal Church in Diocese of New Jersey v. *Graves*, 417 A.2d 19 (N.J. 1980) 3, 4, 6

Rector, Wardens & Vestrymen of Trinity-Saint Michael's Parish, Inc. v. *Episcopal Church in the Diocese of Conn.*, 620 A.2d 1280 (Conn. 1993) 4, 5

Serbian Eastern Orthodox Diocese v. *Milivojevich*,
426 U.S. 696, 709 (1976) 4

Tea v. *The Protestant Episcopal Church in Diocese of Nev.*,
610 P.2d 182 (Nev. 1980) 6

Trinity Presbyterian Church of Montgomery v. Tankersley,
374 So.2d 861 (Ala.1979).....3

Trustees of the Diocese of Albany v. *Trinity Episcopal Church of Glvoersville*,
250 A.D.2d 282 (N.Y. S.Ct. App. Div. 1999) 5

York v. First Presbyterian Church of Anna,
474 N.E.2d 716 (Ill. App. Ct. 1984).....3

INTRODUCTION

Pursuant to Supreme Court Rule 15.8, Petitioners and Select Respondents file this supplemental brief in support of the Petition for Writ of Certiorari, to call the Court's attention to *All Saints Parish Waccamaw, et al. v. The Protestant Episcopal Church in the Diocese of South Carolina, et al.*, No. 29724 (S.C., September 18, 2009) (available at http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=29724),[1] decided by the Supreme Court of South Carolina on Friday, September 18, 2009. The case deepens the state court split identified in the Petition for Writ of Certiorari; involves the identical denomination at issue in the case *sub judice*; applies the same neutral principles of law approach purportedly adopted by the California Supreme Court in its decision below, but reaches the opposite conclusion; and rejects a principal contention regarding the legal effect of Canons of the Episcopal Church made by Respondents The Episcopal Church and The Protestant Episcopal Church in the Diocese of Los Angeles in their Brief in Opposition, further demonstrating that certiorari is warranted in this case.

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[1] The full opinion is reprinted as a Supplemental Appendix to this Brief, beginning at Supp. App. 1a.

ARGUMENT

I. The Decision of the South Carolina Supreme Court Deepens the State Court Split Identified in the Petition.

The decision of the South Carolina Supreme Court in *All Saints Parish Waccamaw* deepens or makes more explicit several aspects of the state court split identified in the Petition. All lend additional support to Petitioners' claim that certiorari is warranted. The fact that the South Carolina case involves the Episcopal Church—the very same denomination at issue in the California decision under consideration here, makes the conflict between the two decisions all the more significant.

A. The South Carolina Court held that a neutral principles of law approach is required by the First Amendment.

The South Carolina Court explicitly held that a neutral principles of law approach is *required* whenever a church property dispute can be resolved according to those neutral principles. Although the South Carolina Court recognized that this Court has allowed both hierarchical deference and neutral principles of law approaches to resolving church property disputes, it expressly held "that where a civil court can completely resolve a church dispute on neutral principles of law, *the First Amendment commands it to do so*." *All Saints Parish Waccamaw*, at Supp. App. 20a (emphasis added) (citing *Pearson v. Church of God*, 478 S.E.2d 849 (1996)).

The holding that the First Amendment "*commands*" the use of a neutral principles approach puts

the South Carolina Supreme Court in agreement with the decisions noted in our Petition from the Supreme Courts of Louisiana and Alabama and an intermediate appellate court from Illinois. Petition at 28 (citing *Fluker Cmty. Church v. Hitchens*, 419 So.2d 445, 447 (La. 1982); *Trinity Presbyterian Church of Montgomery v. Tankersley*, 374 So.2d 861, 866 (Ala.1979); *York v. First Presbyterian Church of Anna*, 474 N.E.2d 716, 719 (Ill. App. Ct. 1984)). It also puts South Carolina at odds with the decision of the California Supreme Court below, which purported to apply a neutral principles approach but in actuality deferred to hierarchical claims and canons of the denomination, as well as the decisions from New Jersey and West Virginia holding, respectively, that a neutral principles approach is permitted "[o]nly where no hierarchical control is involved" and that the First Amendment "dictates" a hierarchical deference approach once a church is determined to be hierarchical. *See* Petition at 30 (citing *Protestant Episcopal Church in Diocese of New Jersey* v. *Graves*, 417 A.2d 19, 24 (N.J. 1980); *Church of God of Madison* v. *Noel*, 318 S.E.2d 920, 923 (W. Va. 1984)). Contrasted with property disputes that can be resolved by neutral principles of law, the South Carolina Court reserved the hierarchical deference approach to "decision[s] of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration," and "where a civil court is presented an issue which is a question of religious law or doctrine masquerading as a dispute over church property or corporate control." In such cases, it noted, the courts "must defer to the decisions of the proper church judicatories in so far as

it concerns religious or doctrinal issues." *All Saints Parish Waccamaw*, at Supp. App. 20a (citing *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 709 (1976)).

B. The South Carolina Court expressly rejected what the California Court below deemed a "strong argument" that the Episcopal Church's Dennis Canon merely restated pre-existing Church policy.

The Dennis Canon was purportedly adopted by The Episcopal Church in 1979 to claim a trust interest in the property of separately-incorporated local churches affiliated with the Episcopal Church, and Respondents have argued that the Canon merely restated long-standing Church policy. *See, e.g.*, BIO at 5-6. The South Carolina Supreme Court explicitly rejected that claim, holding that prior to the Dennis Canon, "[n]o such property canons existed." *All Saints Parish Waccamaw*, at Supp. App. 9a.

That puts the South Carolina decision in conflict with what Respondents described as "[e]very appellate decision" dealing with the Dennis Canon, which according to Respondents "ha[d] held that [the Canon] did not create a new rule regarding property ownership, but merely restated and confirmed the Church's pre-existing policy." BIO, at 39 (citing *In re Church of St. James the Less*, 888 A.2d 795, 810 (Pa. 2005); *Rector, Wardens & Vestrymen of Trinity-Saint Michael's Parish, Inc.* v. *Episcopal Church in the Diocese of Conn.*, 620 A.2d 1280, 1292 (Conn. 1993); *Bishop & Diocese of Colo.* v. *Mote*, 716 P.2d 85, 105 n.15 (Colo. 1986); *Graves*, 417 A.2d, at 24; *Trustees of the Diocese of Albany* v. *Trinity Episcopal Church of*

Glvoersville, 250 A.D.2d 282 (N.Y. S.Ct. App. Div. 1999)). The suggestion by the California Court below "that a strong argument exists that [the Dennis Canon] restated existing policy," Pet.App. 28a, 32a, has now been met with a powerful and persuasive holding to the contrary.

C. The South Carolina Court also held that the Dennis Canon itself was of no legal effect.

In applying neutral principles of law, the South Carolina Supreme Court also explicitly held that the Dennis Canon itself is of "no legal effect," because "[i]t is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another." Supp. App. 25a. That places South Carolina at odds with the California Court below, which disregarded traditional principles of trust law and granted special preference to a religious denomination – the putative beneficiary – to purportedly create a trust interest in property held by a separate but spiritually-affiliated religious corporation without the property owner's express consent.

The South Carolina Court also breaks what Respondents described as the "unbroken line of cases enforcing the [Episcopal] Church's trust interest in parish property." BIO, at 33-34 (citing *Episcopal Diocese of Rochester* v. *Harnish*, 899 N.E.2d 920 (N.Y. 2008); *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005); *Rector, Wardens & Vestrymen of Trinity-Saint Michael's Parish, Inc.* v. *Episcopal Church in the Diocese of Conn.*, 620 A.2d 1280 (Conn.

1993); *Bishop & Diocese of Colo.* v. *Mote*, 716 P.2d 85 (Colo. 1986); *Protestant Episcopal Church in Diocese of N.J.* v. *Graves*, 417 A.2d 19 (N.J. 1980); *Tea* v. *The Protestant Episcopal Church in Diocese of Nev.*, 610 P.2d 182 (Nev. 1980)).

As noted in the Petition, these conflicts reflect much more than the adoption of different policy choices by the state courts. They reflect a deep rift in the state courts' understanding of the neutral principles of law approach approved by this Court in *Jones* v. *Wolf*, 443 U.S. 595 (1979).

II. The South Carolina Supreme Court's Decision Is A Model Of Clarity, Applying The Neutral Principles Of Law Approach Approved By This Court In *Jones* v. *Wolf* In A Manner That Does Not Give Rise To The Constitutional Problems Generated By The Decision Of The California Supreme Court Below.

The recent decision of the South Carolina Supreme Court highlights how straightforward and simple the resolution of church property disputes can be under truly neutral principles of law, in stark contrast to the morass of religious doctrine and polity determinations that are implicated by the methodology followed by the California Supreme Court below, including having a court determine as a threshold inquiry whether and how a church is hierarchical before applying a church property rule of decision. By refusing to give credence to a church canon that, contrary to the most basic precepts of property and trust law, purported to allow a trust to be

created by the beneficiary of the trust without approval of the property owner, the South Carolina Court's decision certainly seems to be more in accord with what this Court had in mind in *Jones v. Wolf* when it noted that the neutral principles of law "method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." 443 U.S., at 603. At the very least, the radically different treatment afforded church canons under the South Carolina Court's application of neutral principles and that afforded by the California Supreme Court below demonstrates that further clarification by this Court about the weight to be given to church canons that conflict with basic precepts of property and trust law is warranted.

CONCLUSION

The recent decision of the Supreme Court of South Carolina, involving the same religious denomination and, purportedly, the same neutral principles of law approach to resolving church property disputes, stands in stark contrast to that of the California Supreme Court under review here. The petition for a writ of certiorari should be granted to resolve that conflict and to clarify how a local church can order its secular affairs so that, when confronted with a doctrinal dispute, the members of its congregation can continue to freely exercise their religion in the houses of worship they built.

Respectfully submitted,

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